

State of Florida



Public Service Commission

CAPITAL CIRCLE OFFICE CENTER • 2540 SHUMARD OAK BOULEVARD
TALLAHASSEE, FLORIDA 32399-0850

-M-E-M-O-R-A-N-D-U-M-

DATE: February 8, 2010
TO: Ann Cole, Commission Clerk - PSC, Office of Commission Clerk
FROM: Cristina Slaton, Executive Secretary to Commissioner Skop 
RE: Docket Correspondence – 090109-EI

URGENT

Ann,

This office has received the attached letter from Bernard H. Cherry, Chairman and CEO, Energy 5.0 LLC, regarding docket no. 090109-EI.

The correspondence has not been viewed or considered in any way by Commissioner Skop. Under the terms of the advisory opinion from the Commission on Ethics (issued July 24, 1991 as CEO 91-31-July 19, 1001), the attached letter does not constitute an ex parte communication by virtue of the fact that it was not shown to the Commissioner. Because it is not deemed to be an ex parte communication, it does not require dissemination to parties pursuant to the provisions of section 350.042, Florida Statutes. However, in such cases Commissioner Skop has requested that a copy of the correspondence be placed on the document side of the docket file.

Attachment

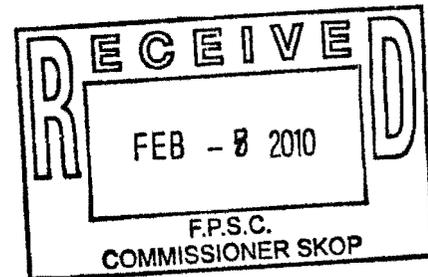
DOCUMENT NUMBER-DATE

00864 FEB-8 09

FPSC-COMMISSION CLERK

ENERGY 5.0 LLC

1601 FORUM PLACE, SUITE 1010
WEST PALM BEACH, FLORIDA 33401



February 8, 2010

VIA HAND DELIVERY

Ms. Nancy Argenziano, Chairman
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399

Re: Tampa Electric Company's Petition for Approval of Solar Power Purchase Contract with Energy 5.0, LLC

Dear Chairman Argenziano:

Let me begin by expressing my sincere gratitude to the Commissioners, and to the Commission Staff, for their extensive, thoughtful, and thorough analysis, consideration, and deliberations regarding Tampa Electric's Petition and the Tampa Electric-Energy 5.0 Solar Power Purchase Contract. As approved, Energy 5.0 will supply solar-generated electricity to Tampa Electric from the Florida Solar I Project ("Project"), which will be located in Polk County. The Commission acted with leadership and vision in voting to promote renewable energy in Florida by approving Tampa Electric's Petition.

Considering the significant effort and time that has been expended to arrive at the Commission's approval, I am deeply concerned that the Commission may consider the proposition that the Commission majority should vacate its decision reflected in your Order No. PSC-10-0057-PAA-EI (which I shall refer to as the "PAA Order") and set the matter for an evidentiary hearing. Throughout this proceeding, Energy 5.0 and Tampa Electric have fully complied with the Commission's processes and procedures for this docket, which has now been pending before the Commission for eleven months. The length of time required to reach this point has been costly to Energy 5.0, and any further delay in the Commission's process for this docket could severely threaten the viability of this important Project. Accordingly, Energy 5.0 supports the PAA Order and respectfully asks that the Commission allow the Commission's processes to continue on their established course, and that the Commission leave its PAA Order undisturbed.

TEL: (561) 697-9800 FAX: (561) 684-3765 DOCUMENT NUMBER-DATE
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0864 FEB-8 0

FPSC-COMMISSION CLERK

As we all recognize, the road that has led us to this juncture has been a long one. Tampa Electric took the first steps down this road in June 2007, when the Company, following the policy directives of the Florida Legislature and Governor Crist's executive orders promoting renewable energy, initiated a competitive request for proposals process through which it sought contracts to supply Tampa Electric and its customers with renewable energy. At the conclusion of its RFP process, Tampa Electric selected Energy 5.0 as the best solar proposal received and proceeded to negotiate toward a power purchase contract with Energy 5.0. After extensive discussions, those negotiations culminated in the Solar Power Contract that was executed by Tampa Electric and Energy 5.0 on February 25, 2009.

Following the Commission's rules and processes, Tampa Electric then petitioned the Commission for approval of the Solar Power Contract for cost recovery purposes on March 9, 2009. Tampa Electric's Petition was docketed and originally scheduled to be considered as a Proposed Agency Action item at the Commission's agenda conference on May 19, 2009. Tampa Electric and Energy 5.0 responded to the Staff's initial discovery in April, but in May, the matter was rescheduled from the Commission's May 19 agenda to its June 15, 2009 agenda conference. Subsequently, the matter was further rescheduled to the Commission's August 18, 2009 agenda, then to the September 15, 2009 agenda conference, and then rescheduled again, this time to the Commission's October 27, 2009 agenda conference.

On October 27, the Commission discussed the issues for approximately three hours. At the conclusion of that discussion, the Commission deferred a decision on Tampa Electric's Petition so that the Staff could gather additional information; Tampa Electric and Energy 5.0 submitted additional information in response to the Staff's data requests. The Commission further discussed Tampa Electric's Petition for approval of the Solar Power Contract for approximately two additional hours at its agenda conference on December 15, 2009. At the conclusion of that discussion, a four-member majority of the Commission voted to approve Tampa Electric's Petition to approve the Solar Power Contract for cost recovery, as requested by Tampa Electric. Six weeks later, on January 25, 2010, the Commission issued its PAA Order No. 10-0057-PAA-EI, setting forth its decision to approve the Solar Power Contract. These events are summarized in the following table.

6/2007	Tampa Electric issues RFP for Renewable Energy
9/2007	Tampa Electric selects Energy 5.0's Florida Solar I proposal as the best solar proposal received and initiates negotiations
9/2007-1/2009	Tampa Electric-Energy 5.0 negotiations
2/25/2009	Tampa Electric and Energy 5.0 execute Solar Power Contract
3/9/2009	Tampa Electric files Petition for Contract Approval
5/9/2009	First Scheduled Agenda Conference Date
6/15/2009	Second Scheduled Agenda Conference Date
8/18/2009	Third Scheduled Agenda Conference Date
9/15/2009	Fourth Scheduled Agenda Conference Date

10/27/2009	Fifth Scheduled Agenda Conference Date; discussion of Tampa Electric's Petition for approximately 3 hours, followed by deferral to a future Agenda Conference
12/15/2009	Agenda Conference discussion of Tampa Electric's Petition for approximately 2 hours, 4-to-1 vote to approve the Contract and Petition
1/25/2009	Proposed Agency Action Order issued
2/9/2009	Contemplated discussion of reconsideration of the PAA Order

Throughout this entire journey, including the various processes that Tampa Electric followed in conducting its RFP, selecting Energy 5.0's Florida Solar I Project, and negotiating the final Solar Power Contract that we executed last February, and also the processes established by the Commission for considering Tampa Electric's Petition, both Tampa Electric and Energy 5.0 have participated fully and have answered extensive discovery and information requests. (Combined, Tampa Electric and Energy 5.0 have answered 69 interrogatories, responded to 12 document production requests, and responded to 19 informal data requests.) Both Tampa Electric and Energy 5.0 participated fully in the extensive discussions – totaling five hours or more – at the October 27 and December 15 agenda conferences. Both Tampa Electric and Energy 5.0 have devoted significant financial and human resources to making the Project a "real" project, rather than an "option" that might be pursued upon Commission approval. As I noted during the Commission's deliberations, Energy 5.0 has acquired control of the site, performed extensive engineering, prepared permit applications, performed interconnection assessment and studies for the Florida Solar I Project, and has spent, altogether, more than \$2 million toward making the Project a reality.

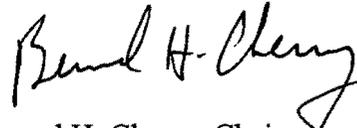
Should the Commission now retract its PAA Order and set this case for a hearing, the viability of the project would likely be significantly impaired by the resulting delay. As the Staff's attorney stated at the January 26, 2010 discussion regarding the suggestion for reconsideration, it would likely be at least four or five months before any hearing process would be concluded, and as I stated during the Commission's December 15, 2009 deliberations, any further delays would severely jeopardize the Project because of constraints that come into play at the end of 2010.

In summary, the Commission established the processes for this docket, and Tampa Electric and Energy 5.0 participated fully in those processes, complied with the numerous requests made of them, and relied on those processes in expending substantial monies and devoting significant efforts to making the Florida Solar I Project a "real" project to serve Tampa Electric and its customers. Energy 5.0 and Tampa Electric appreciate the Commission's careful, thorough evaluation and deliberations that led to your decision on December 15 to approve Tampa Electric's Petition, and that led to the Commission's PAA Order approving the Petition and the Solar Power Contract between Tampa Electric and Energy 5.0 for cost recovery, as requested by the Company.

Ms. Nancy Argenziano, Chairman
February 8, 2010
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The Commission's processes have run their course, and those processes have produced the PAA Order to approve the Solar Power Contract as requested by Tampa Electric's Petition. Energy 5.0 respectfully requests that the Commission allow its processes to continue on their established and prescribed course and leave the PAA Order undisturbed, rather than retracting the PAA Order and setting this docket for hearing. Thank you again for your consideration.

Sincerely yours,



Bernard H. Cherry, Chairman and CEO
Energy 5.0 LLC

COPIES: Commissioner Lisa Polak Edgar
Commissioner David E. Klement
Commissioner Nathan A. Skop
Commissioner Ben A. "Steve" Stevens III
Curt Kiser, Esquire, General Counsel

James D. Beasley, Esquire
Richard A. Zambo, Esquire